

The statement of scope for this rule, SS 023-20, was approved by the Governor on April 20, 2020, published in Register No. 772B on April 27, 2020, and approved by the Natural Resources Board on June 24, 2020. This rule was approved by the Governor on February 10, 2022.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
REPEALING, RENUMBERING AND AMENDING, AMENDING, REPEALING AND RECREATING
AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to **repeal** NR 25.13 (1) and (2) (c) (second note); to **renumber and amend** NR 25.13 (2) (intro.) and (a); to **amend** NR 25.06 (2) (e) 1., 25.13 (2) (intro.), (a), (c), (c) (third note), (e), and (10) and (11) (intro); to **repeal and recreate** NR 25.06 (2) (e) 2. a. and b. and 25.13 (2) (f); and to **create** NR 25.06 (2) (e) 2. c. and d., 25.07 (2) (e) 5., 25.09 (3) (f), 25.10 (5), 25.102, and 25.13 (2) (at) relating to Lake Michigan whitefish management and Great Lakes commercial harvest reporting and affecting small business.

FH-02-20

Analysis Prepared by the Department of Natural Resources

1. Statutes Interpreted: The department has interpreted ss. 29.014 (1), 29.041, 29.519 (1m) (b), 29.519 (5), and 29.973, Stats., as authorizing this rule.

2. Statutory Authority: Sections 29.014 (1), 29.041, 29.519 (1m) (b), 29.519 (5), and 29.973, Stats., grant the authority for this rule.

3. Explanation of Agency Authority:

Section 29.014 (1), Stats., directs the department to establish and maintain any bag limits and conditions governing the taking of fish that will conserve the fish supply and ensure the citizens of this state continued opportunities for good fishing.

Section 29.041, Stats., provides that the department may regulate fishing on and in all interstate boundary waters and outlying waters.

Section 29.519 (1m) (b), Stats., grants discretion to the department to establish commercial fish species harvest limits after giving due consideration to the recommendations made by the commercial fishing boards. In order to establish harvest limits, s. 29.519 (1m) (b), Stats., grants the department the authority to promulgate rules establishing formulas for harvest allocations among licensees or for the allotment of individual licensee catch quotas. Additional authorities granted to the department through s. 29.519 (1m) (b), Stats., include the authority to designate the size, kind and amount of gear allowed for harvesting fish, the authority to restrict the number of licenses issued, and the authority to designate areas in outlying waters as restricted to commercial fishing operations. This section also specifies that the limitations on harvests, licenses, restricted areas, and gear must be based on the available harvestable population of fish and must uphold the wise use and conservation of the fish to prevent overexploitation.

Section 29.519 (5), Stats., authorizes the department to determine the form and manner that commercial fishers must use to submit commercial fishing records and reports.

Section 29.973, Stats., requires commercial fishers to maintain and submit records of commercial fishing activities and directs the department to establish and implement a commercial fish reporting system. The department is given discretion regarding the form and manner of submission.

4. Related Statutes or Rules: The department has also promulgated emergency rules, FH-28-20 (E) / EmR 2114 and FH-10-21 (E) / EmR 2130, to increase the Zone 1 whitefish harvest allotment in Green Bay and implement associated regulations.

5. Plain Language Analysis:

This rule establishes that two lake whitefish population models will be used to calculate the total allowable commercial harvest (TAC) for whitefish in Green Bay and Lake Michigan, describes the model inputs, and provides a framework for allocating the TACs between the three management zones of Lake Michigan. Using the two models and this framework, this rule also updates the total allowable commercial harvest of lake whitefish for all three zones of Lake Michigan for the 2022 and 2023 license years. Updates are necessary to respond to the changing distribution and population dynamics of lake whitefish, as revealed through recent lake whitefish population modeling in Lake Michigan, including Green Bay. If the lake whitefish population is not managed appropriately, the sustainability of the shared commercial and recreational whitefish fishery may be compromised. The rule also implements provisions to minimize the incidental catch of bycatch in whitefish netting operations. Minimizing bycatch is important because Lake Michigan also supports a sport fishery, with lake trout as a key species in Lake Michigan proper and walleye, yellow perch, northern pike, smallmouth bass and muskellunge occupying Green Bay. This rule also requires use of the Electronic Fish Harvest Reporting System (EFHRS) for all Great Lakes commercial fishers, which provides quicker, more accurate access to harvest data than biweekly paper reporting. Electronic reporting has been a priority for managing commercial fisheries for many years, but to date, only a subset of fishers has opted to utilize the electronic reporting system.

SECTION 1 includes a statement that the total allowable commercial harvest (TAC) will be based on department recommendations and results from the Green Bay and Lake Michigan whitefish population models. Previously, a single model was used to inform the total allowable commercial harvest, which was not reflective of the distinct Green Bay and Lake Michigan stocks that have emerged in recent years.

SECTION 2 describes the quantitative population model inputs that will be used to calculate the department's total allowable commercial harvest (TAC) recommendations for lake whitefish in Green Bay and Lake Michigan, which will serve as a foundation for the final total allowable commercial harvest limits and the allotments to the three whitefish commercial fishing zones.

To determine the proposed TAC recommendations, the department utilized two whitefish population models: one for Green Bay (consisting of Zone 1 in its entirety and part of Zone 2) and one for Lake Michigan (consisting of part of Zone 2 and Zone 3 in its entirety). During the current model runs, these models indicated that the Green Bay population could sustain additional harvest, while the Lake Michigan population was not producing sufficient whitefish to warrant the current TAC of 2.88 million pounds for Green Bay and Lake Michigan combined. For Green Bay, the current TAC resulting from the population model is 1,176,889 pounds per license year, which would allow for an increase in the Zone 1 allowable harvest to 569,788 pounds once this rule is implemented (consistent with emergency rule FH-10-21 (E) / EmR 2130). The remainder of the Green Bay TAC, 607,101 pounds, could be harvested in Zone 2 once this rule is implemented. The TAC of 1,176,889 pounds represents 50% of the commercial safe harvest limit derived from the Green Bay population model, with the other 50% being allocated to the whitefish sport fishery. For Lake Michigan, the TAC resulting from the population model is 800,407 pounds per license year. With 351,487 pounds allocated to Zone 3 upon rule implementation, this leaves the remainder of the Lake Michigan TAC, 448,920 pounds, which can be harvested in the Green Bay waters of Zone 2. The TAC of 800,407 pounds represents 100% of the commercial safe harvest limit derived from the Lake Michigan population model. At this time, no portion of the Lake Michigan TAC is allocated to the sport fishery in Lake Michigan because the whitefish sport fishery is very small in Lake

Michigan. If a substantial whitefish sport fishery develops in the coming years, an appropriate portion of this TAC will be allocated to sport anglers.

Under previous rules, the department increased the total allowable commercial harvest for all zones combined to reach the current level of 2.88 million pounds, with the additional poundage from the increase allocated equally between all three zones, and the department also codified the future zone-specific harvest limit plan for situations in which a TAC for Lake Michigan and Green Bay beyond 2.88 million pounds was recommended. However, because the overall total allowable commercial harvest for all zones is now based on the two whitefish population models rather than one model for the entirety of Lake Michigan, including Green Bay, the components of the previous total allowable commercial harvest that applied to all three zones overall are no longer relevant.

SECTIONS 3 and 4 provide the framework for determining the amount of whitefish that may be harvested in zones 1, 2 and 3 of Green Bay and Lake Michigan when the TACs are adjusted in current and future years. SECTION 4 sets the allowable harvest for the 2022 and 2023 license years. Section 3 establishes caps on the amount of whitefish poundage which may be allocated to Zone 1 from the Green Bay TAC (up to 48.4148% (569,788 pounds) of the Green Bay TAC in the 2022 and 2023 license years and up to 67.9758% of the Green Bay TAC or 800,000 pounds, whichever is less, after December 31, 2023). SECTION 3 also establishes caps on whitefish poundage in Zone 3 (43.9135% of the Lake Michigan TAC or 351,487 pounds, whichever is less) and the remainder of the TACs from the Green Bay and Lake Michigan models going to the Zone 2 allowable harvest. To allow commercial fishers more flexibility in managing their business operations, additional poundage beyond the levels from the population models may be allotted to Zone 2 in the future. However, overall harvest for Zone 2 would remain limited to the levels of the TACs by the method in SECTION 5; however, if additional Zone 2 poundage is granted it would allow individual commercial fishers to make greater use of their existing individual catch quotas until the Zone 2 harvest cap is reached. When the recommended allotment for Zone 2 exceeds the level resulting from the population models, the excess amount is allocated to the Green Bay and Lake Michigan waters of Zone 2 under the same proportions as how the poundage for Zone 2 is allocated under the Green Bay and Lake Michigan population models (as outlined in SECTION 2 above). So, 57.5% of the additional poundage would be allocated to the Green Bay waters of Zone 2 and added to the poundage for Green Bay waters of Zone 2 originating from the population model, and 42.5% of the additional poundage would be allocated to the Lake Michigan waters of Zone 2 and added to poundage for Lake Michigan waters of Zone 2 originating from the population model.

SECTION 4 also establishes the proposed annual TACs and annual zone-specific allowable harvest allocations of the TACs for the 2022 and 2023 license years, with an annual Zone 1 allocation of 569,788 pounds, a Zone 2 allocation of 1,056,021 pounds (Zone 2 waters of Green Bay and Zone 2 waters of Lake Michigan combined), and a Zone 3 allocation of 351,487 pounds. Including these allocations in the rule would allow them to take effect immediately upon implementation of the rule to cover the remainder of the 2022 license year and the 2023 license year, and future zone-specific allowable harvest allocation recommendations would be presented to the Natural Resources Board for approval.

SECTION 5 establishes a harvest cap system for whitefish harvest in Zone 2 waters of Green Bay and Lake Michigan to allow commercial fishers flexibility in utilizing their individual catch quotas while ensuring a sustainable fishery. Commercial fishing licensees with individual licensee catch quota allocations in Zone 2 may fish in both the Green Bay and Lake Michigan portions of Zone 2 until the Zone 2 portion of each TAC (Green Bay or Lake Michigan TAC minus the Zone 1 or Zone 3 portion of the TAC, respectively), is reached, whereby the department would close Zone 2 waters of Lake Michigan, Green Bay or both to additional harvest to prevent exceeding the TACs for Green Bay and Lake Michigan.

SECTION 6 requires licensees fishing for whitefish in Lake Michigan and Green Bay, or members of their crew, to notify the department of the location of trap nets upon setting or moving the net and the name of the trap net. Some commercial fishers in Green Bay and Lake Superior already do this. The exact locations of trap nets are needed to help reduce user conflicts as well as for fisheries management purposes. Under this rule, commercial fishers in Green Bay and Lake Michigan would name each net and record each lifted net into the electronic fish harvest reporting system (EFHRS).

SECTION 7 establishes criteria for fishers fishing with trap nets for whitefish in southern Green Bay to ensure that the department can appropriately monitor trap net activities in this area and collect data on the catch composition of fish caught in trap nets. This section would limit the number of trap nets that could be set in grids 901, 902 and 1001, require licensees to notify the department prior to lifting a trap net to allow the department to monitor the lift and collect data, and would require the licensee to report the bycatch by number through EFHRS.

SECTION 8 replaces the paper harvest reporting requirements for Great Lakes commercial fishers with a requirement to report electronically. Currently, state-licensed commercial fishers may voluntarily elect to use electronic harvest reporting in lieu of paper reporting. Electronic harvest reporting will be mandatory for all Lake Michigan, Green Bay and Lake Superior state commercial fishers under this rule. Pursuant to NR 25.01 (3), this rule will also apply to tribal commercial fishers if the Lake Superior Fishing Agreement or an equivalent agreement is no longer in effect. Currently, tribal commercial fishers are required to report harvest to the appropriate tribe in accordance with provisions of the Agreement.

SECTION 9 requires electronic harvest reporting for all commercial fishing licensees operating in Green Bay, Lake Michigan and Lake Superior, regardless of species fished. Electronic harvest reporting is much quicker and more accurate than biweekly paper reporting, which allows the department to better track harvest of commercial fish and bycatch levels.

SECTION 10 describes the method by which commercial fishers will report their daily catch, and provides that commercial fishers would have the option to first record the required reporting information on a paper form before entering it into the electronic fish harvest reporting system by 11:59 p.m. that same day.

SECTION 11 removes the requirement for licensees to notify the department when they are unable to access EFHRS and will be recording their information on a paper report, requires licensees to record their information on the paper form after completing the last net lift of the day and before starting for shore when they are unable to access EFHRS, and specifies that licensees will be required to submit the information from any paper reports to EFHRS once they are again able to access EFHRS. Since electronic reports will be required rather than elective and the paper backup system will ensure proper record-keeping in a timely manner, the department will be able to follow up appropriately with licensees without the notification requirement when the licensee is unable to access EFHRS.

SECTION 12 repeals the note explaining how the department will provide the designated phone number and email address to licensees with which to notify the department when they are unable to access EFHRS. This note is no longer needed since licensees will no longer be required to notify the department when they are unable to access EFHRS.

SECTION 13 modifies the note language relating to paper report forms, which will no longer be submitted biweekly but may be temporarily utilized to record catch information when a licensee is unable to access EFHRS.

SECTION 14 describes how licensees will notify the department through EFHRS rather than a phone call or email to the department when they are unable to weigh their landed catch by the end of the day. Once the department has been notified, the licensee would be able to weigh their catch the next business day.

SECTION 15 removes duplicative language that is already established elsewhere in s. NR 25.13 (2), Wis. Admin. Code and through this rule, and requires whitefish fishers in Lake Michigan and Green Bay to report the name of lifted trap nets into EFHRS each day that they are lifted to check for fish, but not moved to a new location.

SECTION 16 removes references to s. NR 25.13 (1), Wis. Admin. Code, which is no longer an option for commercial fishers under this rule.

6. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations:

No federal statutes or regulations apply. States possess inherent authority to manage the fishery and wildlife resources located within their boundaries, except insofar as preempted by federal treaties and laws, including regulations established in the Federal Register.

7. If Held, Summary of Comments Received During Preliminary Comment Period and at Public Hearing on the Statement of Scope:

On June 11, 2020, the department held a preliminary public hearing on the Statement of Scope for FH-02-20. Sixteen members of the public attended the virtual hearing either by computer or phone. Of the comments received at the hearing and in writing during the comment period, two people registered in support of the scope statement, 14 in opposition and 4 did not state a position. Some of the comments in opposition to the scope statement related to specific rule proposals that had not yet been discussed. Comments included a desire for a sport fishing advisory team for this rule to advise the department on behalf of sport fishers (which the department subsequently organized), that the scope statement is needed to create a rule to address whitefish and the healthy populations in Green Bay, that the scope statement should address user conflict created by nets set in areas popular with sport fishers, that bycatch mortality and disposition should be addressed, that TAC reductions would impact businesses that rely on commercial fishing, that the rule would impact sport fishers and associated businesses, and that sport fishing and hunting fees should not be used to fund activities relating to commercial fishing management.

8. Comparison with Similar Rules in Adjacent States:

Along with Wisconsin, Michigan and Illinois are the only adjacent states with a Lake Michigan commercial fishery. In Michigan, lake whitefish is the focus of the commercial fishery. In addition to the large commercial gill and trap net fishery, a small trawling fishery that focuses on smelt and lake whitefish has operated in Michigan waters of Green Bay since the 1960s. Illinois has a very limited commercial fishery on Lake Michigan. Both states have established quotas, gear requirements, and other restrictions for commercial fishing in Lake Michigan. Wisconsin, Minnesota and Michigan all have a Lake Superior multi-species commercial fishery for such species as lake trout, lake whitefish and cisco, and regulate it through seasons, limitations on the number of licenses, and gear restrictions.

The use of electronic reporting for commercial fishing operations is a requirement in Ohio and Michigan. Ohio requires most commercial fishers to keep accurate daily records of catch and submit the reports monthly. Trap net licensees must submit these records electronically, including entering estimated weight of quota species into the electronic reporting system immediately after net lifts. Trap net fishers are also

required to report when they set and remove nets ½ hour prior to returning to the dock, and must electronically report the estimated weight of non-quota species before entering a different grid. Michigan requires electronic reporting for commercial fishing, when it occurs, through the Fishing Activity and Catch Tracking System which allows users to report on smartphones.

9. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen:

This rule will address quotas (allowable harvest) and other harvest management regulations for lake whitefish in Green Bay and Lake Michigan. The Lake Michigan/Green Bay lake whitefish (*Coregonus clupeaformis*) population is of high value to commercial fishers and is also popular among sport anglers, especially in Green Bay. Three principal whitefish “stocks” (localized groups or populations that spawn and live in certain areas) occupy the Wisconsin waters of Lake Michigan and Green Bay, including a spawning stock in the North/Moonlight Bays area off eastern Door County, a stock in Big Bay de Noc (State of Michigan waters) and a newly developed stock from the west shore tributaries of Green Bay. Three zones for commercial fishing encompass these spawning stocks. Zone 1 is located entirely in the waters of Green Bay, Zone 2 includes waters surrounding the Door County peninsula on both the Green Bay and Lake Michigan side, and Zone 3 includes Lake Michigan waters from the city of Algoma in Kewaunee County and southward.

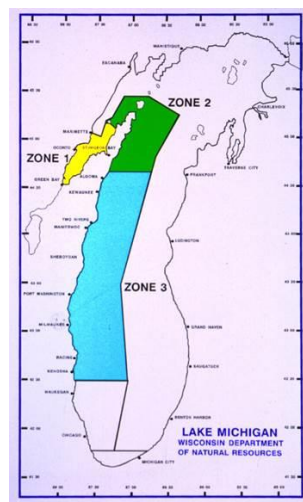


Figure 1: Lake Michigan commercial fishing zones.

The overall lake whitefish population (all stocks) in Lake Michigan has generally been in decline for several years with fewer fish recruiting to replenish the stocks. The current lake whitefish commercial total allowable commercial harvest in Wisconsin waters of Lake Michigan (including Green Bay) is 2.88 million pounds of dressed whitefish per year, which was approved in 2010 (an increase from the prior limit). However, the total pounds of whitefish harvested has been significantly lower than this TAC for many years (Figure 2).

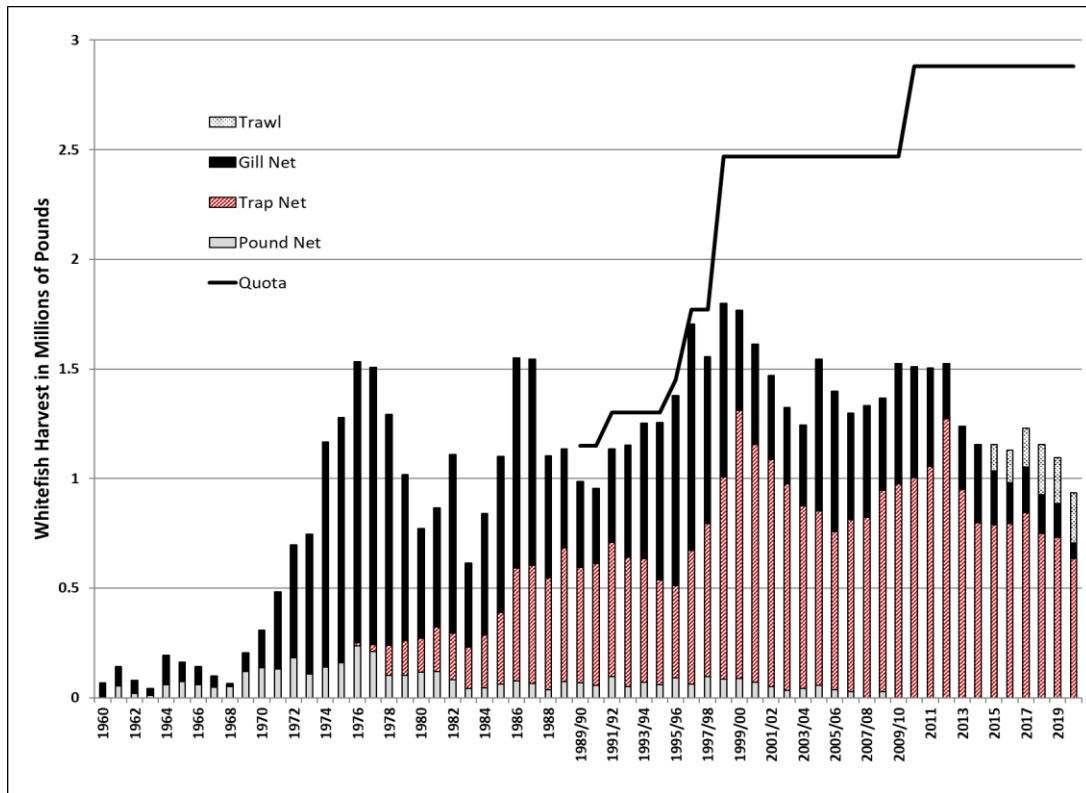


Figure 2: Lake Michigan commercial whitefish harvest by method compared to overall whitefish total allowable commercial harvest, 1960 - 2020

The trend of lower fish recruitment is especially true in the northern end of the lake. Preliminary data from an in-progress department-coordinated whitefish tagging study indicate that the whitefish from the Big Bay de Noc and North/Moonlight Bay stocks mix and contribute to the general Wisconsin commercial fishery in Lake Michigan. These data also indicate that some fish from these stocks, especially the Big Bay de Noc stock, move south into Wisconsin waters of Green Bay. In the lower half of Green Bay proper, however, whitefish stocks have been increasing in abundance and recolonizing historic spawning grounds over the past 10-15 years. Surveys show that some Wisconsin tributaries in Green Bay are sources of lake whitefish recruitment. Whitefish from these tributaries appear to generally remain in Green Bay as adults, with minimal movement into Lake Michigan.

Green Bay whitefish harvest

Due to the increase in whitefish abundance in lower Green Bay, this rule would provide a framework for allowing commercial fishers to harvest additional whitefish in Zone 1, consistent with the emergency rule. However, sport fishers have expressed concern about user conflicts in areas popular for recreational harvest of whitefish and other game fish, as well as commercial catch of non-target game fish species, which this rule addresses through new commercial fishing provisions in southern Green Bay.

The Zone 1 allowable harvest increase of 207,603 pounds of whitefish for a total allowable harvest of 569,788 pounds upon implementation of this rule represents a safe harvest level derived from the total allowable commercial harvest (TAC) generated from the department's whitefish population models for Green Bay, and also takes into account public input received during the public hearing and comment period. According to the Green Bay whitefish population model, the sustainable level of whitefish harvest for Green Bay is 2,355,778 pounds (which includes 2,000 pounds for department assessment

work), which would be equally split between the sport fishing community and the commercial fishing industry. Therefore, the total commercial fishing portion (Green Bay TAC) would be 1,176,889 pounds in whitefish management zones WM1 and WM2, which overlay Zone 1 and part of Zone 2 in Green Bay. For the remainder of the 2022 license year and the 2023 license year, this rule would maintain an annual Zone 1 quota allocation of 569,788 pounds first established through emergency rule FH-10-21 (E) / EmR 2130. Aside from the 569,788 pounds allotted to Zone 1, the remaining 607,101 pounds of the TAC for Green Bay would be allowed to be harvested in the Green Bay portion of Zone 2. Beginning after December 31, 2023, after future runs of the Green Bay population model, the Zone 1 harvest would be limited either by 67.9758% of the future Green Bay TAC or 800,000 pounds, whichever is less. The 67.9758% was calculated by dividing the maximum Zone 1 allowable harvest of 800,000 pounds by the Green Bay TAC in this rule of 1,176,889 pounds.

To address bycatch issues, should they arise, existing rules require large mesh gill net users to move their nets if the level of bycatch reaches 10 percent of the total legal catch. Existing and proposed rules also limit the number of trap nets that a license holder may use at any one time.

Lake Michigan whitefish harvest

While whitefish stocks are increasing in southern Green Bay, the Lake Michigan whitefish population models indicate that stocks are stable or declining. Therefore, this rule adjusts the allowable harvest for Zones 2 and 3 in Lake Michigan to reflect the population model. When this rule is implemented in 2022, the Zone 3 allocation will remain the same as prior to the rule, at 351,487 pounds. After accounting for the Zone 3 allotment of 351,487 pounds, the remaining 448,920 pounds would be allotted to Lake Michigan waters of Zone 2. Therefore, the allowable harvest for Zone 2 (Lake Michigan and Green Bay waters combined) will decrease from the previous Zone 2 limit. However, the actual annual commercial whitefish harvest in Zone 2 has not approached the level of the new harvest limit over the past 8 years. Commercial fishers with individual quota allocations for Zone 2 will be able to fish in either the Green Bay waters of Zone 2, Lake Michigan waters of Zone 2 or both until the total allowable commercial harvest for Green Bay or Lake Michigan, less the Zone 1 and Zone 3 allowable harvest, is reached, to allow commercial fishers greater flexibility in where they fish for whitefish to maximize their individual quota allocations. Once the harvest limits for Zone 2 are reached, the Zone 2 waters of Green Bay, Lake Michigan, or both will be closed to further commercial fishing, but commercial fishers would be able to continue fishing in Zone 1 and Zone 3 as long as they still have available quota in those zones.

The allowable harvest in Zone 3 will not change in the short term with this rule. Therefore, Zone 3 commercial whitefish fishers would be able to continue fishing as they have under rules currently in effect. After future runs of the Lake Michigan population model, Zone 3 harvest would be limited either by 43.9135% of the future Lake Michigan TAC or 351,487 pounds, whichever is less. The 43.9135% was calculated by dividing the current Zone 3 allowable harvest of 351,487 pounds by the Lake Michigan TAC in this rule of 800,407 pounds.

Provisions for commercial fishing in southern Green Bay

Historically, commercial fishing activity for lake whitefish using trap nets in southern Green Bay has been low to zero since 1990. However, due to concerns about the potential impacts of increased trap net use on both sublegal whitefish that spawn in Green Bay as well as game fish species susceptible to becoming bycatch, which may result from the increased Zone 1 quota, a framework to allow for meaningful data collection and monitoring from trap net users is needed. This rule limits the number of trap nets that may be used in southern Green Bay at any one time, requires fishers to notify the department prior to lifting trap nets in this area, and requires reporting of bycatch. These provisions were

devised as alternatives to establishment of a new restricted area due to concerns from the public that any commercial fisher could be issued a permit to fish at will in the proposed restricted area and, conversely, that the criteria for licensees to obtain a permit were too uncertain, especially since data on the impacts of trap nets on fish in this area are sparse. These proposed provisions aim to measure the impacts on species susceptible to becoming bycatch, limit user conflicts, and allow the department to monitor and collect data on trap net fishing activities.

Electronic harvest reporting

The use of an electronic harvest reporting system was first identified as a priority in the 2000 Commercial Fisheries Task Force report, but to date, the goal to receive all commercial harvest reports electronically has not been fulfilled. The report stated: “DNR shall establish an electronic Fish Harvest Reporting System (FHRS) in order to record and report all elements of the commercial catch. This system will replace the current biweekly reporting system, reducing paperwork and improving the timeliness and accuracy of reports. It will also form the basis for a database about fish populations that will assist with efficient management of the Great Lakes resource.”

The first electronic fish harvest reporting system was codified in 2008, with a mandate that all commercial fishers report electronically by July 2010. However, this rule was not ever fully implemented, so many commercial fishers continued to report on the biweekly paper forms, and rule-making in 2016 once again formally restored the paper reporting option with electronic reporting as an elective reporting method. Some commercial fishers have expressed discomfort with using smartphones or computers, or have noted inconsistent cell phone coverage to be able to enter reports when on the boat. However, over the past decade, advancements in cell phones, cell phone coverage, and integration of phones and mobile-friendly websites have improved exponentially, making electronic reporting even faster and easier. To safeguard against connectivity issues or system outages, the department has established procedures in s. NR 25.13 (2) (c), Wis. Admin. Code for situations in which the electronic device malfunctions or the licensee cannot connect to the electronic reporting system, including completing a paper copy of the report for that day before submitting it electronically upon reconnecting to the system.

When this rule is implemented, all Great Lakes commercial fishers would be required to report information on their harvest and fishing activities through the current Electronic Fish Harvest Reporting System (EFHRS), which is a reporting option that multiple commercial fishers already utilize and which is the required reporting method in emergency rule FH-28-20 (E) / EmR 2114 / FH-10-21 (E) / EmR 2123. EFHRS is the only reporting method that can both provide timely data on commercial fish harvest and track bycatch levels on a daily basis, so its use is critical for both monitoring commercial fisheries and catch of bycatch for certain fisheries, such as whitefish. As with the emergency rule, to provide some flexibility for reporting if certain commercial fishers do not have easy access to a smartphone or computer while on the water, this rule would provide two options, one of which allows the commercial fisher to first record the information on a paper form after the last net lift of the day. To further assist commercial fishers in utilizing EFHRS, the department has developed an instruction manual on using the system and will provide training sessions as well.

10. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report:

The rule will impact the harvest of lake whitefish by commercial fishers, and exact economic impacts are likely to vary among commercial fishers. Because of the shift in distribution and overall decline in lake whitefish populations, some members of the Lake Michigan commercial fishing community may benefit

more from the increase of allowable whitefish harvest in Green Bay than others. Additionally, more commercial harvest of whitefish may benefit associated businesses that sell whitefish to consumers (restaurants, taverns, fish boils, fish markets, smoke houses, grocers, fish suppliers, etc.).

The rule is not anticipated to result in any economic impacts from harvest in Zones 2 and 3 because the actual harvest in Zone 2 has not reached the proposed level in several years, and the Zone 3 allowable harvest will not change initially through this rule. However, some commercial fishers may experience a minimal economic impact relating to mandatory use of EFHRS for reporting the daily catch.

While this rule will not impose any additional regulations on sport fishers or related fishing businesses, nor will it directly contribute to user conflicts with sport fishers, sport fishers, fishing guides and associated businesses may be impacted indirectly if the increased Zone 1 allowable harvest limit in this rule leads to additional commercial fishing activities in Green Bay. Sport fishing attracts many anglers to the area each year and contributes \$264.3 million in direct and indirect effects to the Green Bay-area economy annually through fishing expenditures (bait shops, outfitters, guide services, etc.) and related spending (travel, hotels, restaurants, taverns, etc.)¹, and the ice fishery and walleye fishery are increasing in popularity among sport fishers. Of note, sport fishers are concerned about the impacts of additional commercial fishing on bycatch of walleye, northern pike, smallmouth bass, yellow perch and other game fish species, as well as the effects on whitefish. This rule also creates provisions for collecting data on and monitoring trap net activities in southern Green Bay to address concerns of bycatch impacts, mortality of sublegal whitefish, and user conflicts.

1. Winden, Matthew, John Stoll, Kara Bennett and Russ Kashian. "The Economic and Fiscal Impact of Green Bay Recreational Fishing." University of Wisconsin-Whitewater, 2018.

11. Effect on Small Business (final regulatory flexibility analysis):

This rule is anticipated to positively impact commercial fishing businesses that fish for whitefish in Green Bay, as well as local businesses (restaurants, bars, taverns, fish markets, food processors, smoke houses, etc.) that purchase whitefish from commercial fishing businesses to sell to consumers. The exact amount of economic benefit that each commercial fisher may gain due to the increased allowable harvest in Zone 1 waters of Green Bay is unknown, as is the economic impact to associated businesses as a result of increased whitefish harvest. Currently, nine commercial fishing licensees and their employees actively fish for whitefish in Green Bay and have access rights to Zone 1, and additional commercial fishers may be able to purchase quota in Green Bay to fish there, thereby benefitting from this increase. Assuming a dockside value of \$2 per pound for whitefish based on average dockside values over the past five years, a whitefish allowable harvest increase in Zone 1 of 207,603 pounds could convey up to a \$415,206 dockside value benefit to the commercial fishing industry, which would translate into additional income for commercial fishers and their employees, as well as benefits to associated businesses (restaurants, fish markets, taverns, grocers, fish boils, etc.), non-profit organizations that utilize whitefish, and the local economy once the fish are sold at wholesale and retail prices. Four fish suppliers and restaurant managers commented that they have observed an increasing demand for fresh whitefish to supply markets both locally in Wisconsin, as well as in other states. The Door County Economic Development Corporation indicated that the commercial fishing industry supports the local economy and provides jobs with above-average wages, which contribute to spending in the local economy. However, the exact amount of benefit to businesses and the local economy is unknown at this time.

Commercial fishers that fish in Zone 2, which lies across northern Green Bay and Lake Michigan, may experience a negative economic impact from this rule only if they are unable to harvest as much whitefish as in the past due to limits on Green Bay and Lake Michigan whitefish harvest in Zone 2. Over the past

10 years, total harvest in Zone 2 has not approached the current Zone 2 allowable harvest limit, and over the past 8 years and with the 5-year average commercial harvest, the Zone 2 actual harvest has remained below the proposed Zone 2 allowable harvest, so this rule and its adjustments to the Zone 2 quota may not impact the amount of whitefish commercial fishers are able to harvest and therefore may not have an economic impact. Additionally, this rule would continue to allow commercial fishers with Zone 2 individual licensee catch quota allocations to fish anywhere in Zone 2 (including the Green Bay portion, with a higher concentration of whitefish), until the harvest limits for Green Bay and Lake Michigan waters of Zone 2 are reached. In Zone 3, the allowable harvest will not change, so no negative impact from this rule is expected for Zone 3 commercial whitefish fishers due to harvest limits. Therefore, this rule is expected to have a minimal economic impact on Zone 2 fishers and Zone 3 fishers.

This rule would require harvest reports to be entered electronically. EFHRS will require the commercial fisher or crew member to have access to a smartphone or computer to enter the electronic reports, and those that do not have a phone or computer would have to purchase such a device. According to the Pew Research Center (1), an estimated 85 percent of American adults owns a smartphone. With 46 licensed commercial fishers operating in Green Bay and Lake Michigan and 8 in Lake Superior, therefore, an estimated 7 commercial fishers in Lake Michigan and 1 in Lake Superior may not have a smartphone for entering reports electronically. However, some of these commercial fishers may have a computer for entering the reports, and crew members of licensees may also have an electronic device to enter the reports for the licensee's commercial fishing operations. With this information, and estimating that a low-cost smartphone and basic data plan can be obtained for about \$120 per year, the impact to each commercial fishing licensee and the industry overall is likely to be very minimal, about \$960 per year in total at maximum.

The rule will not directly impact sport fishing businesses, but sport fishing businesses and anglers may have a perception of increased user conflict due to additional commercial fishing effort in Green Bay, namely Zone 1, if commercial fishing effort in Green Bay does in fact increase. Since the Green Bay fishery is a shared fishery between sport and commercial fishers, close monitoring of the impacts of the increased Zone 1 allowable harvest through this rule will be important for ensuring that the welfare of sport fishing businesses is also protected. User conflicts will likely remain the same or decrease slightly in Lake Michigan.

12. Agency Contact Person: Bradley Eggold, Great Lakes District Fisheries Supervisor, 414-303-0138, Bradley.Eggold@wisconsin.gov

13. Place where comments are to be submitted and deadline for submission:

Written comments may be submitted at the public hearings, by regular mail, or email to:

Meredith Penthorn

Department of Natural Resources

P.O. Box 7921

Madison, WI 53707

608-316-0080; Meredith.Penthorn@wisconsin.gov

Comments may be submitted to the department contact person listed above or to DNRAAdministrativeRulesComments@wisconsin.gov until the deadline given in the upcoming notice of public hearing. The notice of public hearing and deadline for submitting comments will be published in the Wisconsin Administrative Register and on the department's website, at <https://dnr.wi.gov/calendar/hearings/>. Comments may also be submitted through the Wisconsin Administrative Rules Website at <https://docs.legis.wisconsin.gov/code/chr/active>.

The deadline for submission of comments was Jan. 4, 2022.

RULE TEXT

SECTION 1. NR 25.06 (2) (e) 1. is amended to read:

NR 25.06 (2) (e) 1. The total allowable annual commercial harvest of whitefish in Wisconsin waters of Lake Michigan and the total allowable annual commercial harvest of whitefish in Wisconsin waters of Green Bay shall be determined by the natural resources board based on recommendations from the department and results from Green Bay and Lake Michigan whitefish population models described under subd. 2. a.

SECTION 2. NR 25.06 (2) (e) 2. a. is repealed and recreated to read:

NR 25.06 (2) (e) 2. a. The department shall utilize the Green Bay whitefish population model for calculating the department recommendation for the total allowable commercial harvest of lake whitefish in Green Bay and shall utilize the Lake Michigan whitefish population model for calculating the department recommendation for the total allowable commercial harvest of lake whitefish in Lake Michigan. The recommendation for the total allowable commercial harvest for each area shall be calculated every three years using output from the population models. The population models shall use the following quantitative data for each whitefish management unit: weight at age, length at age, maturity schedule, trap net harvest by weight, trap net fishing effort by number of lifts, age composition of whitefish caught in trap nets, gill net harvest by weight, gill net fishing effort by number of lifts, age composition of whitefish caught in gill nets, recreational harvest by numbers, recreational fishing effort by angler hours, age composition of recreationally caught whitefish, and, in Green Bay, young-of-the-year index survey. An appropriate exploitation rate based on recent harvest trends shall be applied to the Green Bay and Lake Michigan model estimates, respectively, and the department may also account for whitefish mortality to reach the total allowable commercial harvest recommendation for Green Bay and the total allowable commercial harvest recommendation for Lake Michigan.

SECTION 3. NR 25.06 (2) (e) 2. b. is repealed and recreated to read:

NR 25.06 (2) (e) 2. b. For the 2022 and 2023 license years, the allowable harvest for zone 1 shall not exceed 48.4148% of the total allowable commercial harvest of whitefish in Green Bay determined under subd. 2. a. or 569,788 pounds. For any given license year after December 31, 2023, the allowable harvest for zone 1 shall not exceed 67.9758% of the total allowable commercial harvest of whitefish in

Green Bay determined under subd. 2. a. or 800,000 pounds, whichever is less. For any given license year, the allowable harvest for zone 3 shall not exceed 43.9135% of the total allowable commercial harvest of whitefish in Lake Michigan determined under subd. 2. a. or 351,487 pounds, whichever is less, and the allowable harvest for zone 2 shall consist of the total allowable commercial harvest for Green Bay less the allowable harvest for zone 1 plus the total allowable commercial harvest for Lake Michigan less the allowable harvest for zone 3, and shall be implemented in accordance with subds. 2. c. and 5.

SECTION 4. NR 25.06 (2) (e) 2. c. and d. are created to read:

NR 25.06 (2) (e) 2. c. If the allocation for zone 2 exceeds the allowable harvest for zone 2 produced by the Green Bay and Lake Michigan population models as described under subd. 2. b., the adjusted amount of whitefish that may be allocated to the Green Bay waters of zone 2 shall be calculated by the following formula: $[X + ((\text{zone 2 recommended allocation} - (X+Y)) * (X/(X+Y)))]$, and the adjusted amount of whitefish that may be allocated to the Lake Michigan waters of zone 2 shall be calculated by the following formula: $[Y + ((\text{zone 2 recommended allocation} - (X+Y)) * (Y/(X+Y)))]$, where X is the difference between the Green Bay total allowable commercial harvest calculated under subd. 2. a. and the zone 1 allowable harvest under subd. 2. b., and Y is the difference between the Lake Michigan total allowable commercial harvest calculated under subd. 2. a. and the zone 3 allowable harvest under subd. 2. b. For accuracy, decimals shall be rounded to nearest sixth decimal place.

d. For the 2022 and 2023 license years, the Green Bay total annual allowable commercial harvest shall be 1,176,889 pounds, the Lake Michigan total annual allowable commercial harvest shall be 800,407 pounds, the zone 1 annual allowable harvest shall be 569,788 pounds, the zone 2 annual allowable harvest shall be 1,056,021 pounds, and the zone 3 annual allowable harvest shall be 351,487 pounds.

SECTION 5. NR 25.07 (2) (e) 5. is created to read:

NR 25.07 (2) (e) 5. Licensees with an individual licensee catch quota issued under this paragraph may fish for whitefish in either the Green Bay waters of zone 2, the Lake Michigan waters of zone 2, or both. Licensees shall cease fishing for whitefish in either the Green Bay waters of zone 2, the Lake Michigan waters of zone 2, or both as follows:

a. When the whitefish total allowable commercial harvest in Green Bay as established under s. NR 25.06 (2) (e) 2. a. less the zone 1 allowable harvest set under s. NR 25.06 (2) (e) 2. b. has been reported caught, the department shall notify licensees to cease fishing for whitefish in Green Bay waters

of zone 2, except that all whitefish nets in the water shall be lifted or rendered inoperable under s. NR 25.09 (2) (a) 10. or (b) 2. and the legal fish may be harvested.

b. When the whitefish total allowable commercial harvest in Lake Michigan as established under s. NR 25.06 (2) (e) 2. a. less the zone 3 allowable harvest set under s. NR 25.06 (2) (e) 2. b. has been reported caught, the department shall notify licensees to cease fishing for whitefish in Lake Michigan waters of zone 2, except that all whitefish nets in the water shall be lifted or rendered inoperable under s. NR 25.09 (2) (a) 10. or (b) 2. and the legal fish may be harvested.

SECTION 6. NR 25.09 (3) (f) is created to read:

NR 25.09 (3) (f) After setting, moving, replacing, or recasting a trap net for whitefish in Green Bay or Lake Michigan and before starting for the dock or shore, the licensee, or a member of the licensee's crew, shall record all of the following in accordance with s. NR 25.13 (2) (at):

1. The latitude and longitude at which the pot and king line buoy of the net are set.
2. A unique name for that trap net.

SECTION 7. NR 25.102 is created to read:

NR 25.102 Commercial fishing in southern Green Bay. For commercial fishers fishing for whitefish in that portion of southern Green Bay south of the line at 44° 50' N latitude, commonly known as grids 901, 902 and 1001, all of the following requirements apply:

(1) Each commercial fisher may set, use, or operate no more than one trap net per license at a time.

(2) The commercial fisher shall notify the department through the phone number, email address or other method specified by the department no later than 4 p.m. the day prior to lifting a trap net. The notification shall include the license number and name of the licensee, name and location of net to be lifted, departure location, date of departure, and time of departure.

(3) The commercial fisher or a member of the commercial fisher's crew shall report the number of incidentally caught fish of each species through the electronic fish reporting system, in accordance with s. NR 25.13.

SECTION 8. NR 25.13 (1) is repealed.

SECTION 9. NR 25.13 (2) (intro.) and (a) are renumbered NR 25.13 (2) (ad), (ah), and (ap) and amended to read:

NR 25.13 (2) ELECTRONIC REPORTING. (ad) A person required to be licensed under s. 29.519 (1m), Stats., to conduct commercial fishing operations on Lake Michigan, Green Bay, or Lake Superior, ~~or fishing as a treaty fisher, in lieu of the requirements under sub. (1), may elect to~~ shall submit a daily fishing report to the department by means of the electronic fish reporting system that includes ~~all records of pounds of fish harvest, harvest effort, and all other information called for on the report form by means of the electronic fish reporting system.~~ all of the following:

1. The licensee's name, address, license number or fleet reporting number.
2. The date.
3. The name and number of the boat fished.
4. The licensee's fishing location and depth.
5. The licensee's fishing effort.
6. The gear used.
7. The estimated pounds of each fish species harvested for each fishing trip, excluding estimated pounds of lake trout taken in Lake Superior.
8. The number of lake trout taken in Lake Superior.
9. The weighed pounds of harvest.
10. The weighed catch by species for commercial fish.
11. The number of incidentally caught fish of the species and waters that the department annually specifies.
12. All other information called for on the report form.

(ah) ~~All~~ A licensee shall report all fishing activities for the day under par. (ad); ~~including the estimated pounds of each fish species caught required pursuant to par. (f) and the weighed catch by species for commercial fish,~~ shall be reported before 11:59 p.m. of each day during which the licensee

engages in on-water fishing activity. Reports shall be submitted in the English language on electronic forms provided for this purpose by the department and include such information as may be deemed necessary by the department for management of the fishery and to prevent depletion of the fish supply. ~~The~~ Except as provided under par. (c), the daily report shall be submitted using an electronic communication device operated by the licensee or a licensee's crew member. The daily fishing report, which may include a record of the report on an electronic communication device, shall accompany the fish to the dock or shore and be made available to a department representative upon request.

(ap) ~~At the request of the licensee, the~~ The department shall issue unique login credentials to the licensee and, upon request of the licensee, to any licensee crew member in order to access the electronic fish reporting system and submit reports. ~~Unique login credentials shall be assigned to each person for whom login credentials are requested.~~ A person shall only enter or submit a record into the electronic fish reporting system using their own department issued login credentials.

SECTION 10. NR 25.13 (2) (at) is created to read:

NR 25.13 (2) (at) The licensee or member of the licensee's crew may submit the report in any of the following ways:

1. By direct input through an electronic communication device to the electronic fish reporting system after completing the last net lift of the day but before starting for the dock or shore, and no later than 11:59 p.m. that same day.
2. By recording all required information on a daily paper report form supplied by the department after completing the last net lift of the day but before starting for the dock or shore, then submitting this information through an electronic communication device to the electronic fish reporting system no later than 11:59 p.m. that same day.

SECTION 11. NR 25.13 (2) (c) is amended to read:

NR 25.13 (2) (c) If the electronic communication device malfunctions or is unable to connect to the electronic fish reporting system, the licensee or a licensee's crew member shall ~~immediately notify the department by calling a designated phone number or by submitting an email message to a designated email address.~~ The licensee or licensee's crew member shall complete a paper copy of the biweekly report for that day after completing the last net lift of the day but before starting for the dock or shore, and before 11:59 p.m. the same day. The paper copy of the fishing report shall accompany the fish to dock or shore. After each trip's information has been recorded, the report may not be transported for the rest of

the day in such a way that it can be altered except to record information pertaining to additional fishing trips taken that day. Upon reestablishing the functionality of the electronic communication device or reestablishing connection with the electronic fish reporting system, the licensee or licensee's crew member shall enter the daily fishing activity information and information from any paper reports completed under this paragraph and shall submit ~~them~~ electronically to the department. The paper copy of the ~~biweekly~~ report shall be retained as part of the licensee's records required under s. 29.519 (5) (dm), Stats., and made available to a department representative upon request.

SECTION 12. NR 25.13 (2) (c) (second note) is repealed.

SECTION 13. NR 25.13 (2) (c) (third note) is amended to read:

NR 25.13 (2) (c) Note: ~~Biweekly fishing~~ Paper report forms are provided by the department to each licensee at the beginning of the license year. Additional forms may be obtained by writing: DNR, 110 South Neenah Avenue, Sturgeon Bay, WI 54235.

SECTION 14. NR 25.13 (2) (e) is amended to read:

NR 25.13 (2) (e) Except for reporting trawl fish harvest ~~pursuant to~~ under par. (g), when the landed catch cannot be weighed by the end of the day, the licensee or crew member shall ~~call a department designated telephone number or submit an email message to a department designated email address before 11:59 p.m. that day and notify the department of the licensee's name, commercial fishing license number or fleet reporting number, species of fish, and estimated pounds of each species and note in the comment box of the report form submitted under this section~~ that the landed catch cannot be weighed and reported until the next business day. The licensee or crew member shall then weigh the landed catch the next business day and report the weight by fish species and other information required by the department on the form of the electronic fish reporting system before 11:59 pm of that day.

SECTION 15. NR 25.13 (2) (f) is repealed and recreated to read:

NR 25.13 (2) (f) In addition to the other requirements in this subsection, each person required to be licensed under s. 29.519 (1m), Stats., to conduct commercial whitefish fishing operations on Lake Michigan or Green Bay, or a member of the licensee's crew, shall report the name of the lifted trap net pursuant to s. NR 25.09 (3) (f) to the department after lifting the trap net and before starting for the dock or shore through the electronic fish reporting system in accordance with par. (at).

SECTION 16. NR 25.13 (10) and (11) (intro.) are amended to read:

(10) High value species. In addition to the reporting requirements contained ~~in subs. (1) and~~ under sub. (2), when fishing for a high value species, each commercial fisher or designated crew member shall file a float plan each day prior to the start of the day's fishing activity by calling a department designated telephone number.

(11) Enhanced reporting. In addition to the reporting requirements contained ~~in subs. (1) and~~ under sub. (2), any person convicted of 2 or more violations of s. 29.503 or 29.519, Stats., or this chapter is subject to the enhanced reporting requirements of this section in addition to any court-ordered penalties, at the following levels:

SECTION 17. EFFECTIVE DATE. This rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

SECTION 18. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on January 26, 2022.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

BY _____

For Preston D. Cole, Secretary